

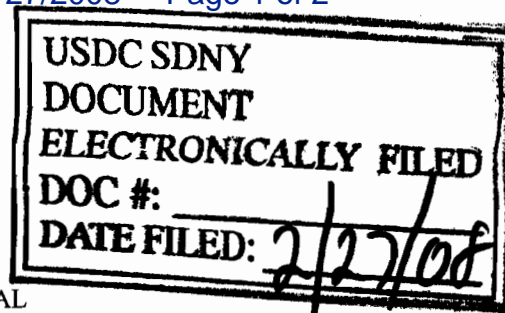


STATE OF NEW YORK
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CRIMINAL DIVISION
Federal Habeas Corpus Section



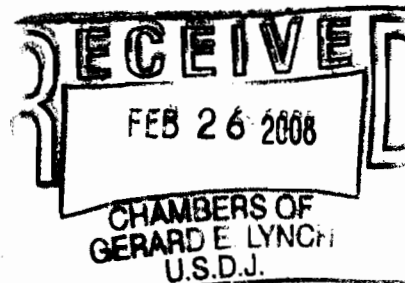
February 22, 2008

BY FIRST CLASS MAIL

Honorable Gerard E. Lynch
United States District Judge
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 910
New York, New York 10007-1312

Re: Allen Valerio v. Division of Parole
07-CV-9867 (GEL)

MEMO ENDORSED



Your Honor:

I am an Assistant Attorney General in the office of Andrew M. Cuomo, Attorney General of the State of New York, attorney for respondent in the above-referenced habeas corpus petition. By order dated December 17, 2007, Your Honor granted respondent's request for a 60-day extension of time to file his answer to the above-referenced habeas corpus petition until March 4, 2008.

Although we have received most of the relevant state court records from the New York County District Attorney's Office, we have yet to receive all of them. Specifically, we are still missing the trial and sentencing transcripts. We have contacted both the New York County Supreme Court Law Library, which keeps the transcripts of all New York County trials, and petitioner's appellate counsel, but neither of them could locate their copies of the transcripts. Consequently, we have contacted the court reporter for petitioner's trial to see if he can locate his file and estimate how long he would take for transcription, but have not yet received any response. Also, the District Attorney's Office is still in the process of locating their records for its opposition to petitioner's direct appellate leave letter, and its response to his New York Criminal Procedure Law ("C.P.L.") § 440.10 motion.

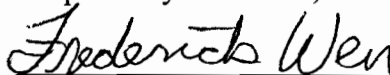
Therefore, I respectfully request a second 60-day extension of time to file my answer until May 3, 2008. A second extension is necessary so that I may receive and review the complete state court records, particularly the jury trial and sentencing transcripts, direct appellate briefs, and post-conviction papers, and prepare a thorough answer to the petition, which contains four claims. All of these records are necessary for a complete answer because petitioner's first three claims – improper admission of unreliable hearsay, prosecutorial misconduct for referring to petitioner's silence at the time of his arrest, and improper consideration of uncharged conduct at sentencing –

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arose at trial or at sentencing, while his fourth claim, alleging a violation of Brady v. Maryland, 373 U.S. 83 (1963), was raised only in his C.P.L. § 440.10 motion. Additionally, I am managing six other habeas corpus matters, and have been directed to submit a response in each of them, with four others due in March, and two due in April. Finally, because petitioner is still on parole, with his five-year post-release supervision period lasting until 2012, one more extension will not unduly prejudice him. Only one previous extension has been sought and granted in this matter. Of course, should I receive and review the records and finish my answer earlier than anticipated, I will make every effort to file it before the deadline.

I have not contacted petitioner concerning this request as he is proceeding *pro se* and is currently released on parole. Thank you for your consideration.

Respectfully submitted,



FREDERICK H. WEN (FW 7588)

Assistant Attorney General

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New York, NY 10271

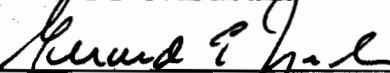
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cc (by U.S. Mail): Allen Valerio
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New York, NY 10035

** Granted. There will be no
further extensions.*

SO ORDERED


GERARD E. LYNCH, U.S.D.J.

2/27/08